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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/801,785 | 03/09/2001 | Tomohiko Serita | 040894-5640 | 5548 |

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MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

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| EXAMINER |
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VANORE, DAVID A

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| ART UNIT | PAPER NUMBER |
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2881

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 09/801,785 | Applicant(s) SERITA, TOMOHIKO | |
| | Examiner David A Vanore | Art Unit 2881 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed December 16, 2003 have been fully considered but they are not persuasive.

Applicant argues that Baumann does not disclose a device or method for the detection of a plate or sheet shaped body. Examiner does not find this argument persuasive. Applicant's arguments rely upon treating the preamble of the claim as if it were a limiting feature. In the instant case however, the portion of the preamble in question recites an intended use or application of the device and method.

"If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir.1999).

Applicant further argues that the light transmitters and receivers of Baumann are situated only on one side of the object and the receivers on the other. There is no requirement in the claim language that receivers and transmitters be situated on opposite sides of a body to be detected. The claims require that the first sensor be parallel to one face of the body and the second sensor be parallel to another face of the body. Clearly, the relation of the body (42) to the light transmitters and sensors (11subi and 12subi) show this limitation. Claims 1-8 stand finally rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baumann.

Baumann teaches a method and apparatus for detecting a plate or sheet shaped body having a plurality of optical emitters and receivers (11 and 12) parallel to each face of a body and one another, a first comparative circuit (15) and a second comparative circuit (20) for judging reference values from a detection signal received by receivers (12), and a control section 27 for outputting a plurality of different drive signals (28) to the plurality of light emitting means such that they are controllably turned on and off as recited in claims 1-3.

Further Figs. 1-4 show that the first and second optical sensor are disposed that light emitted in the second time period by the second light emitting section is direct on upon the second receiver and obliquely incident on the first receiver as recited in claim 4, the monitoring circuit comprises an output lever adjuster to normalize the output signal (Col. 4) as recited in claims 5 and 7, the monitoring circuit comprises a comparative circuit to compare the output of a light receiving point and a first judgement reference value (Col. 3 Lines 4-57) as recited in claims 6 and 8.

Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baumann.

Regarding claims 9 and 10, a no-load condition as defined in the specification at pages 5-6 is a condition where a body is not in a measurement stage. Newly submitted

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claims 9 and 10 ~~require~~^{require} that a first output level is adjusted by a first output level adjustment means to adjust a first output of a first judgement reference value which corresponds to a no-load condition. The examiner interprets this claim language to mean that the first output is adjusted to a value which corresponds to no body present for measurement in the device. Baumann recites an output adjustment means in the form of a diagnostic apparatus which selectively adjusts the outputs of a selected detector to zero, indicating that no body is present (Col. 9 Lines 21-44). Therefore, the diagnostic means of Baumann accomplishes the same essential function and method of that which is recited in claims 9 and 10.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Vanore whose telephone number is (571) 272-2483. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on (571) 272-2477. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dav


JOHN R. LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800